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SEP 10 2004

In re Application of

John J. Daniels

Application No. 09/992,190

Filed: November 16, 2001

Attorney Docket No. 14531.71.4.2

OFFICE OF PETITIONS

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed August 2, 2004, to revive the above-identified application.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed July 24, 2003, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned after midnight October 24, 2003.

In response, petitioner submitted with the instant petition \$665 for the petition to revive fee, an amendment, Request for Continued Examination (RCE), \$770 for the filing of the RCE, one (1) sheet of Formal Drawing, and a Request for a three (3) months extension of time. However, an extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Accordingly, since the \$950 extension of time submitted with the petition on August 2, 2004 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

The petition is **GRANTED**.

The application file is being forwarded to Technology Center Art Unit 2613 for processing the Request for Continued Examination under 37 CFR 1.114, and for further review of the amendment filed with the instant petition.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6711.

Andrea Smith
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy